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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,937	11/25/2003	Thomas A. Moeller	14036	6903

7590 03/23/2005

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EXAMINER

BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/721,937

Applicant(s)

MOELLER ET AL.

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-7 and 9-20 is/are allowed.
- 6) ☒ Claim(s) 2 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claims 2 and 8 is withdrawn in view of the newly discovered reference(s) to Seron (US 2877598) and Lan (US 6058578). Rejection(s) based on the newly cited reference(s) follow. The inconvenience to applicant is regretted.

Claims 3-7 and 9-20 are allowed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim2 is rejected under 35 U.S.C. §102(b) as being clearly anticipated by Seron (US 2877598).

Seron (figures 1-4) teaches a whistle inherently capable of being used as a zipper pull through the ring 118 that is inherently capable of being secured to a zipper slider, the whistle comprising : a whistle body 112 defining a front end, a back end, and an upper surface, the whistle body further including a first aperture 111 and a second aperture in the upper portion of the whistle and an outer frame 110 positioned over the whistle body in such a manner so as to allow a zipper ending to be secured to the zipper pull mechanism via the ring 118, the outer frame further including an enlarged opening such that when the outer frame is positioned over the whistle body, the opening in the outer frame is aligned with the second aperture of the whistle body so that when air is passed through the first aperture in the whistle body. the air is

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allowed to continue to pass through the second aperture of the whistle body and the opening in the outer frame to thereby create a loud, piercing noise, wherein the first aperture in the whistle body extends through the front end of the whistle body, and the second aperture in the whistle body extends through the upper surface of the whistle body.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over Seron (US 2877598) in view of Lan (US 6058578).

Seron (figures 1-4) teaches a whistle inherently capable of being used as a zipper pull through the ring 118 that is inherently capable of being secured to a zipper slider, the whistle comprising : a whistle body 112 defining a front end, a back end, and an upper surface, the whistle body further including a first aperture 111 and a second aperture in the upper portion of the whistle and an outer frame 110 positioned over the whistle body in such a manner so as to allow a zipper ending to be secured to the zipper pull mechanism via the ring 118, the outer frame further including an enlarged opening such that when the outer frame is positioned over the whistle body, the opening in the outer frame is aligned with the second aperture of the whistle body so that when air is passed through the first aperture in the whistle body. the air is allowed to continue to pass through the second aperture of the whistle body and the opening in the outer frame to thereby create a loud, piercing noise, wherein the first aperture in the whistle

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body extends through the front end of the whistle body, and the second aperture in the whistle body extends through the upper surface of the whistle body. The difference is that the ring 118 is not cord. However, the use of cord to form an attaching ring is well known in the art and Lan (figures 1-2) suggests the use of a cord 3 as an attaching ring for a zipper pull. It would have been obvious to modify the whistle of Seron such that the ring is made of cord in view of Lan teaching that it is desirable to do so in order to have more flexibility.

Conclusion

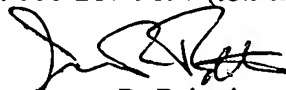
The references of Crosby et al. (US 587795, figures 1-2) and Braving the Great Outdoors from USA Today; Jan 1996; 124, 2608 teaches that it is conventional to attach a whistle to a zipper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (703) 308-2222. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
Art Unit 3677

JRB